IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15477 of 2006
Date of decision:22.12.2006

M/s The Bhatinda District Cooperative Milk Producers Union Limited, Bhatinda

....Petitioner

versus

The State of Punjab and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. M.R.Sharma, Advocate, for the petitioner.
Ms. Urvashi Dhugga, AAG, Punjab.

JUDGMENT:

This petition challenges notice dated 4.9.2006, Annexure P.1 under Section 21(1) of the Punjab General Sales Tax Act, 1948 (for short, 'the 1948 Act'), proposing to revise the order of assessment finalised on 20.3.2001.

Facts set out in the petition are that the petitioner is a Cooperative Society registered under the provisions of the Punjab Cooperative Societies Act, 1961 (for short, 'the 1961 Act') and is also registered as a dealer under the provisions of the 1948 Act. The petitioner is running a milk plant under the control of the Punjab State Cooperative Milk Producers Federation Limited, Chandigarh. The Act provides for levy of purchase tax on milk when purchased for use in the manufacture of any goods other than tax free goods. For the year ending 31.3.2000, assessment of the petitioner was completed on 20.3.2001 on the basis of return filed and the petitioner was allowed refund of Rs.5191/-. The Act contains a provision for suo motu revision under Section 21 of the 1948 Act, which reads as under:-

> "21(1). The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.
> Xx xx xx xx"

In the provision for assessment i.e., Section 11 of the 1948 Act, period of three years from the last date for filing return is prescribed for completing assessment. It has been submitted in the petition that period prescribed for completing assessment was relevant for keeping the books of account and the petitioner was not required to preserve books of account thereafter. Reliance has been placed on judgment of the Hon'ble Supreme Court in **Ghanashyamdas v. Regional Assistant Commissioner of Sales Tax Nagpur,** (1963) 14 STC 976. Further contention raised is that the said period should be considered to be relevant period for exercise of suo motu revisional jurisdiction and if power of revision is exercised after the said period, the same should be held to be without jurisdiction. Reliance has been placed on judgment of the Gujarat High Court in **Mechfield Industries v. Commissioner of Taxes, Assam and others,** 146 STC 695, wherein initiation of revisional jurisdiction after expiry of eight years was quashed. Reliance is also placed on Single Bench judgment of this Court in **Gopal Oil Mills v. Assistant excise and Taxation Commissioner,**

Ludhiana and others, (1984) 57 STC 308 to the same effect which was affirmed by a Division Bench judgment of this Court in **Assistant Excise and Taxation Commissioner v. Gopal Oil Mills and others** (1995) 97 STC 428. Exercise of revisional power after 13 years was quashed by this Court in **Fine Surgical Dressing Manufacturing Co. v. State of Punjab and another,** (2000) 12 Punjab and Haryana Taxes 252.

In the reply filed, stand taken is that no limitation has been prescribed for exercise of revisional jurisdiction.

Learned counsel for the State has relied upon judgment of this Court in **State of Haryana v. National Scientific Industries,** (1996) 103 STC 455, wherein, it was observed as under:-

> "Under section 21(1) of the Punjab Act, the Assessing Authority can act at any time to examine the legality and propriety of an order and the limitation provided under section 11-A of the Punjab Act would not apply for revising the assessment already framed. A perusal of sections 11-A and 21 of the Punjab Act would show that these two sections operate in two different fields. Power to reassess under section 11-A of the Punjab Act has been given to the Assessing Authority and a limitation of 5 years has been prescribed within which reassessment can be made whereas under section 21 of the Punjab Act, the power to revise the assessment has been given to the Commissioner who can, at his own motion, send for the record of any proceedings at any time, which are either pending or disposed of by any of the authorities subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings. There is no limitation provided under section 21 of the Punjab Act. Under section 21(1) of the Punjab Act, plenary powers of revision, without prescribing any period of limitation, have been given to the Commissioner. The limitation provided under section 11-A of the Punjab Act, thus, cannot be introduced in the proceedings under section 21(1) of the Punjab Act. The question as to whether the jurisdiction of limitation prescribed under section 11-A of the Punjab Act stands already rejected by two decisions of this Court in Narain Singh Mohinder Singh v. State of Punjab, (1963) 14 STC 610 and the National Rayon Corporation Limited v. Additional Assistant Excise and Taxation Commissioner, Punjab, (1964) 15 STC 746. In the National Rayon Corporation Limited's case (1964) 15 STC 746 (P&H), it was held as under:-

> "....It is obvious that if the Legislature intended to limit the power of the Commissioner under section 21 to a period of three years after the close of an assessment year or even after the disposal of the proceedings by an assessing Authority, it could, and in the circumstances almost certainly would, have said so in section 21, for the Legislature was aware that a period of limitation had, for purposes of reassessment by an Assessing Authority, been fixed in section 11-A. The conclusion, in my opinion, must be that the Legislature did not intend to fetter the power of the Commissioner under section 21 by any rule of limitation and, therefore, left it to the Commissioner's discretion to exercise his power at any time. Mr. Bhagirath Dass says that it is improbable that such power unlimited in time could have been entrusted to the Commissioner, but, I can find nothing improbable about it, and the argument that the Commissioner may decide to reopen a matter settled twenty or thirty years previously, does not lead anywhere. The power of revision mentioned in section 21 is altogether separate from and unconnected with the power of reassessment by an Assessing Authority under section 11-A of the East Punjab General Sales Tax Act. In my opinion, therefore, the learned single Judge was right in holding that the Additional Assistant Excise and Taxation Commissioner had authority to revise the previous orders made by the Assessing Authority in the present cases."
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> The reasoning adopted by the Division benches in Narain Singh Mohinder Singh's case (1963) 14 STC 610 (P&H) and the National Rayon Corporation Limited's case (1964) 15 STC 746 (P&H), stands approved by a Full Bench of this Court in Hari Chand Rattan Chand's case (1969) 24 STC 258.
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> In view of the decisions of this Court in Asian Rubber and Plastic Industries case (1982) 50 STC 383 and Luthra Rubber Industries case (1985) 59 STC 198, question No.(ii) is answered against the assessee and in favour of the department."

We have heard learned counsel for the parties and perused the record.

Question for consideration is whether in absence of statutory prescription of period of limitation for exercise of revisional jurisdiction, such jurisdiction can be exercised only within the period prescribed for

completing assessment or within further reasonable period and if so, how much is the reasonable period within which such jurisdiction could be exercised.

In **The State of Orissa v. Debaki Debi and others,** AIR 1964 SC 1413, dealing with Proviso to Section 12(6) of the Orissa Sales Tax Act, 1947, it was observed that period for assessment provided therein was applicable even to exercise of revisional jurisdiction, though the said jurisdiction was different. Relevant observations are as under:-

> "21.....If we look at the substance of the matter as we must, it appears clear that the provision of a period of limitation of 36 months for the passing of an order of assessment of tax is really an independent legislative provision of the Act and though it has been inserted by the draftsmen in the form of a 'proviso' in Section 12(6), it is in substance not a real 'proviso' to the main provision. That independent legislative provision lays down that no order "assessing the amount of tax shall be passed after the lapse of 36 months from the expiry of the period" for which the assessment is made. The provision is not in terms limited only to orders of assessment made under S.12 but on its language applies to and governs any order assessing the amount of tax which would manifestly include an assessment under any provision of the act besides S.12. The consequence is that even if an order of assessment made in exercise of powers of revision under S.23 be held to be not an order made under S.12 this limitation of 36 months from the expiry of the period for which the assessment is made will still be applicable."

In S**.B. Gurbaksh Singh v. Union of India and others,** (1976) 37 STC 425, the matter was considered by the Hon'ble Supreme Court with reference to Bengal Finance (Sales Tax) Act, 1941, as applicable to Delhi. It was observed that ratio of decision in **Debaki Debi'**s case (supra) must be confined within its four-corners and could not be extended to the facts of case considered by the Hon'ble Supreme Court. Referring to later judgment in **Swastik Oil Mills Limited v. Munshi, Deputy Commissioner of Sales Tax,** (1968) 21 STC 383(SC), it was observed that the exercise of revisional power was not same as assessment and it will be unjust, unreasonable and impracticable to say that the bar of limitation for assessment must continue to be done at all stages of proceedings. While concluding, it was observed

as under:-

> "Apropos the fourth and lst submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee can be exercised in due course. No time limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case."

We may also refer to a subsequent judgment of Hon'ble the Supreme Court in **Government of India v. Citedal Fine Pharmaceuticals,** 1989 (42) ELT 515(SC), wherein, it was observed as under:-

> "6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the

facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

In **State of Gujarat v. Patel Raghav Natha and others,** AIR 1969 SC 1297, the Hon'ble Supreme Court considered the exercise of revisional power under section 211 of the Bombay land Revenue Code 1879. It was observed:-

"11. The question arises whether the Commissioner can revise an order made under section 65 at any time. It is true that there is no period of limitation prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

12. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under section 211. Under section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case, the Commissioner set aside the order of the Collector on October 12, 1961 i.e., more than a year after the order, and it seems to us that this order was passed too late."

In **Ibrahimpatnam Taluk Vyavasaya Collie Sangham,** AIR 2003 SC 3592, while referring to Section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950,

expression "at any time" for exercise of suo motu power was interpreted to mean within "reasonable time". Relevant observations are as under:-

> "9. .....Use of the words "at any time" in sub section (4) of section 50-B of the Act only indicates that no specific period of limitation is prescribed within which suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and with what period the suo motu powers is to be exercised. In sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of parties. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of dictionary meaning of words "at any time", the suo motu power under sub section (4) of section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.
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> 10. This Court in a recent decision in D.Saibaba v. Bar Council of India and another, (2003) 6 SCC 186, after referring and quoting passages from Justice

> G.P.Singh's Principles of Statutory Interpretation observed that "Reading word for word and assigning a literal meaning to Section 48-AA would lead to absurdity, futility and to such consequences as Parliament could have never intended. The provision has an ambiguity and is capable of being read in more ways than one. We must, therefore, assign the provision a meaning – and so read it – as would give life to an otherwise lifeless letter and enable the power of review conferred thereby being meaningfully availed and effectively exercised".

11. In Principles of statutory Interpretation (8th Edn., 2001), the author has stated thus:-

> "It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed."

The authority has stated again as under:-

> "In selecting out of different interpretations 'the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things', as it may be presumed 'that the legislature should have used the word in that interpretation which least offends our sense of justice."

12. The learned single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words 'at any time' in sub-section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is 'reasonable time' has to be determined on the facts of each case."

In **State of HP and others v. Rajkumar Brijender Singh and others,** AIR 2004 SC 3218, referring to Section 20 of the HP Ceiling on Land Holdings Act, 1973, conferring suo motu power on Financial

Commissioner, interpreting the words "at any time", it was held that such power had to be exercised within reasonable time. The relevant observations are:-

> "6. ....It is true that sub-section (3) provides that such a power may be, exercised at any time but this expression does not mean there would be no time limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fix period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power suo motu action could be exercised. For example in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, well it could be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted the order of the Collector which has been interfered with was passed in January 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by the reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before lower appellate authority is withdrawn may be by the State. Thus, the view taken by the High Court is not sustainable...."

From the above, following principles emerge:-

(i) Period prescribed for completing assessment does not control exercise of revisional jurisdiction;

(ii) Even when no limitation has been prescribed, power of revision has to be exercised within a reasonable period. What is reasonable period has to be decided in facts of each case for which no hard and fast rule could

be laid down.

Applying the above principles to the present case, we find that the order of assessment is dated 20.3.2001 and is sought to be revised by notice dated 4.9.2006. Neither in the show cause notice nor in the reply filed, any reason has been mentioned justifying exercise of revisional jurisdiction after more than five years. In absence of any special features or explanation, period of five years cannot be held to be reasonable in the present case for exercise of revisional jurisdiction. The impugned notice has, thus, to be held to be arbitrary and liable to be set aside.

Accordingly, we allow this petition and quash the impugned notice dated 4.9.2006, Annexure P.1.

(Adarsh Kumar Goel)
Judge

December 22, 2006 (Rajesh Bindal)
'gs' Judge